



Board of Public Utilities
www.nj.gov/bpu

Chris Christie
Governor

Kristi Izzo
Board Secretary

Kim Guadagno
Lt. Governor

NOTICE¹

RE: Non-Docketed Matter - In the Matter of the Board's Main Extension Rules at 14:3-8.1 et seq.

On December 30, 2009, the Appellate Division issued a decision invalidating certain provisions of the Board's Main Extension Rules and remanding the matter to the Board² to be decided in light of the Appellate Division's opinion. In re Centex Homes, LLC Petition for Extension of Serv., 411 N.J. Super. 244 (App. Div. 2009) ("Centex Decision"). The Appellate Division specifically recognized the Board's authority to issue regulations pursuant to N.J.S.A. 48:2-27 et seq., including the allocation of costs between developers and utilities and requiring developers to bear the initial cost of an extension, which may be subsequently refunded if the development generates sufficient business.

The Board's jurisdiction over utility extensions can be found at N.J.S.A. 48:2-27, which provides that the Board

[M]ay ...require any public utility to establish, construct, maintain and operate any reasonable extension of its existing facilities where in the judgment of the board, the extension is reasonable and practicable and will furnish sufficient business to justify the construction ... and when the financial condition of the public utility reasonably warrants the original expenditure.

The Board has adopted rules concerning the extension of service at N.J.A.C. 14:3-8.1 et seq.

In light of the Centex Decision, the Board issued a Secretary's letter on March 24, 2010 advising that the Board will analyze applications for main extensions made on or after December 30, 2009 pursuant to N.J.S.A. 48:2-27 by applying the applicable suggested formulae at N.J.A.C. 14:3-8.9 through 8.11, if all other statutory criteria are met. N.J.A.C. 14:3-8.1 et seq. The Board directed utilities to process an application for an extension as if it is in a Designated Growth Area³ under N.J.A.C. 14:3-8.1 et seq.

¹ Not a Paid Legal Advertisement

² Commissioner Elizabeth Randall recused herself in this matter and did not participate in the discussion or vote.

³ In directing that any project be treated as if it were in a "Designated Growth Area" pursuant to N.J.A.C. 14:3-8.1 et seq. the Board is implementing those portions of the Board's Main Extension Rules deemed permissible by the Appellate Division. The Board does not purport to make any judgment or change as to the State Development and Redevelopment Map or any planning area designation made by the State Planning Commission. Furthermore, this Notice does not affect any statutory or regulatory obligations upon any party seeking a Main Extension.

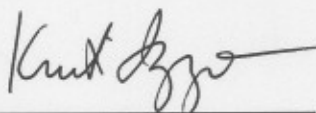
In determining how to apply the Centex Decision, the Board seeks public comments on whether the Centex Decision should be given retroactive effect, specifically as to the following:

1. How should the Board treat matters filed with the Board pursuant to the Board's Main Extension Rules at N.J.A.C. 14:3-8.1 et seq. which were pending at the Board on December 30, 2009?
2. How should the Board treat matters filed and decided by the Board, prior to December 30, 2009, pursuant to the Board's Main Extension Rules at N.J.A.C. 14:3-8.1 et seq.?
3. How should the Board treat completed main extensions pursuant to the Board's Main Extension Rules at N.J.A.C. 14:3-8.1 et seq. where no matter was filed or pending with the Board prior to December 30, 2009?
4. How should the Board treat main extension deposit agreements between utilities and applicants pursuant to the Board's Main Extension Rules at N.J.A.C. 14:3-8.1 et seq. where no matter was filed or pending with the Board prior to December 30, 2009?
5. What are the costs to applicants and utilities associated with giving the Centex Decision retroactive effect?

The Board welcomes public input on these issues. Written comments on this issue will be accepted until May 28, 2010. Written comments should reference the caption listed above and may be submitted in writing to:

Kristi Izzo
Secretary of the Board
Board of Public Utilities
Two Gateway Center
Newark, NJ 07102

Comments may also be submitted via email to board.secretary@bpu.state.nj.us. Please reference the above noted captions.



Kristi Izzo
Secretary of the Board

Dated: May 3, 2010